

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA,)	Civil Action No. _____
)	
Plaintiff,)	
)	
vs.)	
)	
CROSSINGS DEVELOPMENT, L.L.C.)	CONSENT DECREE
and MATTHEW DAVID CONGDON,)	
)	
Defendants.)	

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Army Corps of Engineers ("COE"), filed the Complaint herein against Defendants Crossings Development, L.L.C. ("Crossings Development") and Matthew David Congdon ("Congdon") alleging that Defendants violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. §1311(a).

WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by discharging fill material and/or controlling and directing the discharge of fill material into waters of the United States at a site located at the intersection of I-77 and Killian Road in Richland County, South Carolina, as further identified on Attachment A (referenced herein as the "Site").

WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of COE, to restore the damages caused by

their unlawful activities; and (3) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d);

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' claims under the CWA set forth in the Complaint regarding the Site between and among the Defendants, Crossings Development and Congdon, (collectively "Settling Parties") and the United States;

WHEREAS, the United States and the Settling Parties agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims against the Settling Parties in this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against the Settling Parties in this case (except any criminal matter), and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law or any finding that the Settling Parties placed fill material into waters of the United States, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the District of South Carolina pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because the subject property is located in this District and the cause of action alleged herein arose in this District.

3. The Complaint states claims upon which relief can be granted pursuant to Sections 301, 309, and 404 of the CWA, 33 U.S.C. § 1311, 1319, and 1344.

II. APPLICABILITY

4. The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, as well as their officers, agents, servants, employees and successors.

5. The transfer of ownership or other interest in the Site shall not alter or relieve Defendants of their obligation to comply with all of the terms of this Consent Decree. At least fifteen (15) days prior to the transfer of ownership or other interest in the Site the party making such transfer shall provide written notice and a true copy of this Consent Decree to its successors in interest and shall simultaneously notify the COE and the United States Department of Justice at the addresses specified in Section IX below that such notice has been given. As a condition to any such transfer, the party making such transfer shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement between and among the Settling Parties and the United States of all claims that are the subject of the Complaint (except any criminal matters).

7. This Consent Decree in no way affects or relieves the Settling Parties of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

8. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree or any pending or future criminal matter related to this civil settlement.

9. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

10. Nothing in this Consent Decree shall constitute an admission of fact or law by any party.

IV. SPECIFIC PROVISIONS

CIVIL PENALTIES

11. The Settling Parties, jointly or severally, shall pay a civil penalty to the United States in the amount of Twenty-Five Thousand Dollars (\$25,000.00), within thirty (30) days of entry of this Consent Decree.

12. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's office for the District of South Carolina. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

13. Upon payment of the civil penalty required by this Consent Decree, the Settling Parties shall provide written notice, at the addresses specified in Section IX of this Consent Decree that such payment was made in accordance with Paragraph 11.

14. Civil penalty payments pursuant to this Consent Decree are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

RESTORATION

15. The Settling Parties agree to restore the Site in accordance with the attached Restoration Plan. (Attachment B) Restoration will be commenced with fifteen (15) days of the entry of this Consent Decree, if not all ready commenced. The Restoration Plan will be fully and faithfully compiled with in all respects. The approval of the Restoration Plan and the acceptance of the work performed by the Settling Parties under the Restoration Plan by the COE does not infer that the subject Site or any of the work under the Restoration Plan will be permitted under the CWA in the future. Temporary road crossings in wetlands under the Restoration Plan will not be considered authorized under the CWA and must be removed or separately authorized for the Restoration Plan to be complete.

16. To ensure that the Site identified in Attachment A remains undisturbed, the Settling Parties shall, within thirty (30) days of entry of this Consent Decree, record a certified copy of this Consent Decree with the Register of Deeds in Richland County, South Carolina. Thereafter, each deed, title, or other instrument conveying an interest in the Site identified in Attachment A shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

17. The Settling Parties shall allow COE, upon prior notification, and at reasonable times with proper identification, to enter onto any property owned by he Settling Parties for purposes of monitoring and measuring compliance with the terms and conditions of this Consent Decree.

V. NOTICE

18. Within thirty (30) days of the deadline for completing any task, including restoration, of this Consent Decree, the Settling Parties shall provide the United States with written notice, at the address specified in Section IX of the Consent Decree, of whether or not that task has been completed.

19. If the required task has been completed, the notice shall specify the date when it was completed, and explain the reasons for any delay in completion beyond the scheduled time for such completion required by the Consent Decree.

VI. DISPUTE RESOLUTION

20. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of negotiations among the parties to this Consent Decree affected by the dispute to attempt to resolve such dispute. The period for negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. Following the 30-day negotiation period, if the affected parties are unable to agree upon the meaning or the requirements of this Consent Decree, any affected party may petition the Court for resolution of the dispute. The petition shall set forth the nature of the dispute and a proposal for its resolution. Any other affected party shall have thirty (30) days to respond to the petition and propose an alternate resolution. In resolving any such dispute, the controlling standard shall be which of the parties' proposals most appropriately fulfills the terms, conditions, requirements and objectives of this Consent Decree and the CWA.

21. The filing of a petition asking the Court to resolve a dispute shall not extend or postpone any obligation of the Settling Parties under this Consent Decree, except as provided in Paragraph 27 below regarding payment of stipulated penalties.

VII. FORCE MAJEURE

22. The Settling Parties shall perform the actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events that constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of one of the Settling Parties, including their employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstance arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local permits.

23. If one or both of the Settling Parties believe that a Force Majeure event has affected such Settling Party's ability to perform any action required under this Consent Decree, such Settling Party shall notify the United States in writing within seven (7) calendar days of the event at the addresses listed in Section IX. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;

- C. the length or estimated duration of the delay; and
- D. any measure taken or planned by the Settling Parties to prevent or minimize the delay and a schedule for the implementation of such measures.

The Settling Parties may also provide to the United States any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree.

24. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. The Settling Parties shall coordinate with COE to determine when to begin or resume the operations that had been affected by any Force Majeure event.

25. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedure in Section VI of this Consent Decree.

26. The Settling Parties shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of such Settling Parties and any entity controlled by the Settling Parties, including their contractors and consultants; (2) that the Settling Parties or any entity controlled by the Settling Parties could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

VIII. STIPULATED PENALTIES

27. After the entry of this Consent Decree, if Settling Parties fails to timely fulfill any of its respective requirements of the Consent Decree, then such Settling Party, jointly or severally, shall pay a stipulated penalty to the United States. Unless reduced by the United States at its discretion, or reduced by the Court upon motion as discussed below, the amount of such penalty shall be as follows:

- | | | |
|----|---|------------------|
| A. | For Day 1 up to and including
Day 30 of non-compliance | \$100.00 per day |
| B. | For Day 31 up to and including
60 of non-compliance | \$200.00 per day |
| C. | For Day 61 and beyond
of non-compliance | \$300.00 per day |

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

28. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VI and/or the Force Majeure provisions in Section VII shall be resolved upon petition to this Court as provided in Paragraph 20.

29. The filing of a petition requesting that the Court resolve a dispute shall stay such Settling Parties' obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any terms or conditions of this Consent Decree. In the event that the Settling Parties do not prevail on the

disputed issue, stipulated penalties shall be paid by the Settling Parties as provided in this Section.

30. To the extent the Settling Parties demonstrate to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 22 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

31. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

32. The Settling Parties shall make any payment of a stipulated penalty in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of South Carolina. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendants shall provide written notice, at the addresses specified in Section IV of this Consent Decree.

IX. ADDRESSES

33. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses;

A. TO THE UNITED STATES DEPARTMENT OF JUSTICE

R. Emery Clark, Esquire
Assistant United States Attorney
U.S. Department of Justice
1441 Main Street, Suite 500

Columbia, SC 29202

B. TO COE:

John Kassebaum, Esquire
United States Army Corps of Engineers
69A Hagood Avenue
Charleston, SC 29403

C. TO SETTLING PARTIES

Nelson Mullins Riley & Scarborough, LLP
Newman Jackson Smith, Esquire
Post Office Box 1806
Charleston, SC 29402

X. COSTS

34. Each party to this Consent Decree shall bear its own costs and attorney's fees in this action. Should the Settling Parties subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, the Settling Parties shall be liable for any costs or attorney's fees incurred by the United States in any actions against the Settling Parties for noncompliance with or enforcement of this Consent Decree.

XI. PUBLIC COMMENT

35. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose material facts, which lead the United States to conclude that the proposed judgment is

inappropriate, improper, or inadequate. The Settling Parties consent to the entry of this Consent Decree without further consent.

XII. CONTINUING JURISDICTION OF THE COURT

35. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XIII. MODIFICATION

36. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and the Settling Parties and approved by the Court. This Consent Decree shall terminate upon the late of five (5) years or the fulfillment of all obligations under Section IV of this Consent Decree.

AGREED AND ACCEPTED.

Date: 2/17, 2005



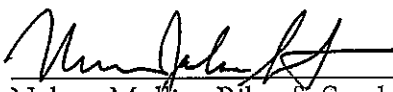
R. EMERY CLARK (#1183)
Assistant United States Attorney
District of South Carolina

Date: 2/17, 2005



JOHN KASSEBAUM
Assistant District Counsel

Date: February 14, 2005



Nelson Mullins Riley & Scarborough, LLP
NEWMAN JACKSON SMITH
Attorney for Settling Parties

IT IS SO ORDERED.

United States District Judge

_____, 2005.

Attachment A to Consent Decree

**Wetland Survey Map dated October 22, 2003 prepared for Crossings
Development by B. P. Barber & Associates
Signed by H. B. Dingle Jr. March 4, 2004**

Hard Copy filed with the Clerk of Court

**Restoration Plan
for
Killian Crossing
Richland County, South Carolina**

April 2004

Prepared For:
Crossing Development, LLC

Prepared By:
Newkirk Environmental, Inc.
1887 Clements Ferry Road
Mt. Pleasant, SC 29492
843/388-6585

ATTACHMENT B

**RESTORATION PLAN
FOR
KILLIANS CROSSING DEVELOPMENT
RICHLAND COUNTY, SOUTH CAROLINA**

APRIL 2004

1.0 INTRODUCTION

The purpose of this document is to propose a comprehensive restoration plan for impacts that have occurred on the Killian Crossing Development site in Richland County, SC.

Upon approval of this restoration plan and/or approval of an After-the Fact Department of the Army permit¹ by US Army Corps of Engineers (COE) and after the S.C. Department of Health and Environmental Control (SCDHEC) issues the required water quality certification, pursuant to Section 401 of the Clean Water Act, the responsible party(s) will implement the work described herein, to include completion of restoration activities, monitoring and remedial measures that may be necessary to insure success, and placing upland buffers to mitigate for temporal losses thereby providing further protect the restored wetland resources on the site. Perpetual preservation of restored areas, including the upland buffers, will be accomplished by placing restrictive covenants, to be held by the Crossing Development, LLC, owner of the proposed Killian Crossing Development. The responsible party(s) will provide necessary funding for implementation of the restoration plan.

¹ Development of the property will involve permanent impacts to specific areas of wetlands that have been affected by the mechanized landclearing, grading, and filling activities, implementation of the restoration effort will commence immediately on those areas not proposed for permanent impact as part of the Master Development Plan. After a final decision by the COE and the SCDHEC on the required Federal permit and State certification, any areas proposed for permanent impacts not approved will be restored in accordance with the approved plan.

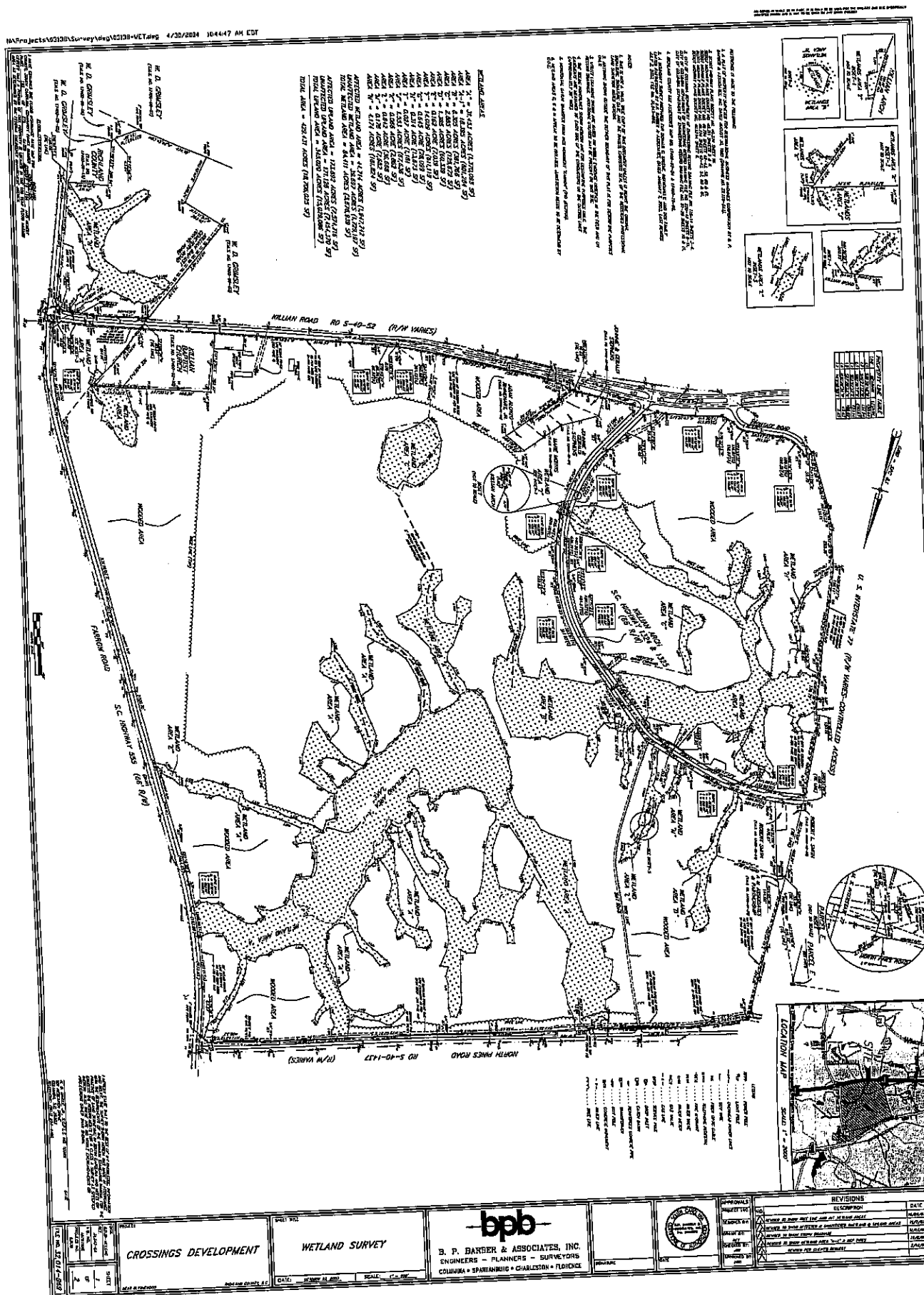


Figure #2 - Wetland Survey

2.0 SITE DESCRIPTION

2.1 Site Location

The Crossing Development property is a 429.431-acre tract in the northeast quadrant of the intersection of I-77 and Killian Road (State Highway 52) in Richland County, SC (See Figure 1-Site Location Map). The site can be accessed from Killian Road via the driveway at the residence immediately west of Killian Baptist Church.

2.2 Past and Current Land Uses

Crossing Development, LLC purchased a 429.431-acre tract from IBM in January 2003. The intent of Crossing Development, LLC is to create a mixed-use development consisting of residential, retail, and commercial facilities on that portion of the property situated west of Clemson Road extension totaling 370.02-acres in size. The 429.431-acre property was part of an approximate 2200-acre tract owned by IBM. It is understood that the primary objective of the previous owner was silvicultural with intent of managing the tract for timber production.

2.3 Existing Conditions

The 429.431-acre tract consists of \pm 345-acres of uplands and \pm 84-acres of waters of the United States, including wetlands. A comprehensive wetland delineation (See Figure 2-Wetland Survey) has been completed by Newkirk Environmental, Inc. and field reviewed by the U.S Army Corps of Engineers. A final plat has been submitted to the COE for written verification that the wetland boundaries are accurately reflected on the plat entitled "Wetland Survey", prepared by B. P. Barber & Assoc. dated February 19, 2004. Approximately 51% of the property, including wetlands, has been disturbed by mechanized land clearing and grading activities. Based upon the wetlands delineation and site evaluations, breakdown of the project site impacts is as follows:

Affected Waters of the United States = 44.714 acres

Unaffected Waters of the United States = 39.697 acres

Total Waters of the United States = 84.411 acres

Affected Uplands = 173.892 acres

Unaffected Uplands = 171.128 acres

Total Uplands = 345.020 Acres

All work within the subject property has been suspended until resolution of the existing unpermitted impacts is achieved. At the recommendation of Richland County and with the approval of the COE and the SCDHEC, proper sediment and erosion control measures have been installed to prevent additional impact from erosion of the cleared and graded areas.

3.0 Proposed Wetland Restoration

The attached exhibit (See Figure 3-Restoration Plan) illustrates the location and type of impact that have occurred on the property. The exhibit also illustrates/defines the areas that are proposed for permanent alteration to achieve the overall development plan for the 370.02-acre project site. Permanent impacts include filling wetland areas for development purposes and for road crossings throughout the site. There are three types of wetland impacts that have occurred to the site without the benefit of a Department of the Army permit or certification from the SCDHEC. The impacts are as follows:

1. mechanized land clearing
2. mechanized land clearing including grade and fill operations, and,
3. mechanized land clearing including grade and fill operations with French drain and/or reinforced concrete pipes installed.

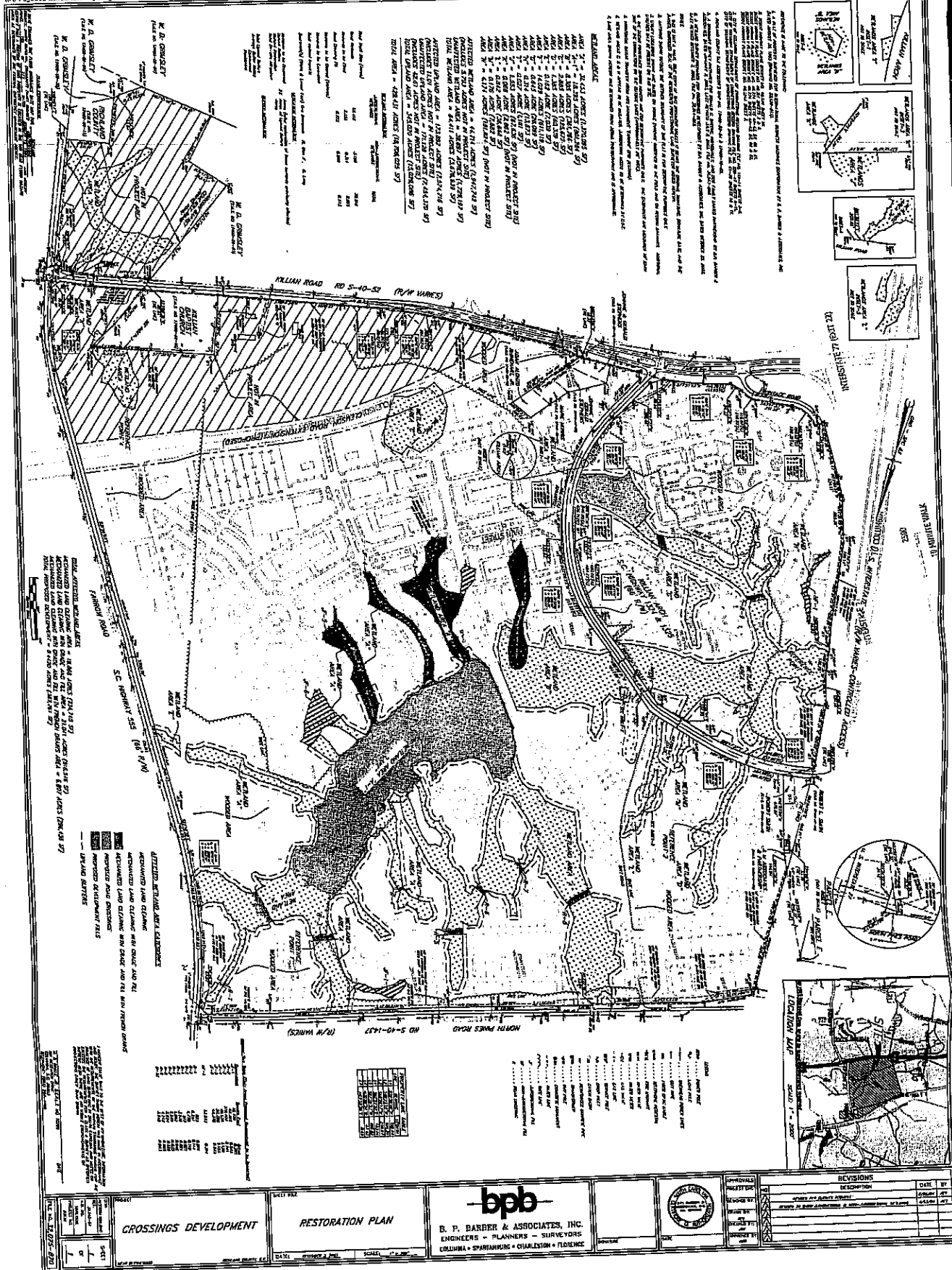


Figure #3 - Restoration Plan

The overall concept and intent of the restoration plan is to recreate the natural grade of certain impacted wetland areas, by leveling, removing fill material, or replacing hydric soils in excavated areas, replanting with indigenous wetland species and protecting the areas from future impacts or encroachment by placing restrictive covenants on certain defined areas of the property. Within each defined impact type, the following restoration is proposed.

3.1 Earthwork/Establishment of Historic Grade

3.1.1 Mechanized Land Clearing

Within the mechanized land clearing areas (**16.866-acres**) the impacts include removal of vegetation, including stumps, with material being side cast. The level of disturbance within this category varies greatly throughout the site. In most areas, the majority of the harvested timber has been removed from the site and disturbance typical to timber harvesting exists. This includes minor rutting and piling of debris (limbs and unmerchanable timber).

In areas with minimal disturbance beyond clearing of vegetation the goal of the restoration plan is designed to restore the areas with as little additional disturbance as possible. Prior to beginning site work, Newkirk Environmental, Inc. will coordinate with the selected site work contractor to identify those areas that do not require large scale mechanized treatments to level ruts or stump holes. No grading or leveling activities will be undertaken in these areas and they will be replanted in concert with other restoration areas as described in Section 3.2.

In other mechanically cleared areas, additional disturbance including deep rutting, removal of stumps and root raking has occurred in addition to removal of vegetation. To restore this type of impacted areas, leveling of the soils must

occur to restore original grade. This will involve moving the side cast wetland soils to areas lower in grade to create a more natural grade to facilitate revegetation and permit natural sheet flow of water once restored. Desired final grades will be determined by use of topographic information available for the site and further based on adjacent undisturbed elevations and general observations of grade within the system. Re-establishment of desired grades will be accomplished using mechanized means with every effort to minimize additional disturbance. This will include utilizing low impact or small-scale machinery where possible. Once proper grades are established the areas will be planted with indigenous species as described in Section 3.2.

3.1.2. Mechanized Land Clearing, Grade and Fill

Within the site, **21.041-acres** have been disturbed by mechanized land clearing and grading activities. Following mechanized land clearing these areas were graded to backfill low areas or stump holes thereby establishing a consistent level grade. Where necessary, backfill material was obtained from adjacent uplands.

Prior to beginning restoration activities, Newkirk Environmental, Inc. will coordinate with the site work contractor to identify and clearly mark or survey these areas and establish desired finished grade and elevation. The areas identified as having this type impact will be regraded and, as necessary, excavated or dugout to restore natural elevation. Natural elevations will be deemed to have occurred when natural hydric soils are exposed. If it is determined that the original soil horizon has been removed or substantially disturbed beyond being covered by fill, a qualified soil scientist from the COE or Natural Resource Conservation Service will be consulted to determine proper

remediation. Once proper elevations and grade are re-established these areas will be planted with indigenous species as described in Section 3.2.

3.1.3 Mechanized Land Clearing, Grade and Fill with French Drains or Reinforced Concrete Pipes

In certain identified areas (**6.807 acres**), french drains and/or reinforced concrete pipes (RCP) were installed in waters of the United States that were also affected by mechanized land clearing and grade and fill operations. Restoration of these identified areas will involve separating and/or blocking flow in the french drains as near and accomplishing the treatments described above to address mechanized land clearing and grading. At each location, the french drain will be broken with a trackhoe and a trench will be dug through any crushed stone at the break. The excavated trench will be backfilled with clay or some other impervious material to block water flow through the French drains. The effort of blocking the french drains will act to maintain normal hydrology within the areas and restore normal subsurface flows. In areas where RCPs have been installed, the pipes will be removed from waters of the United States and the natural stream channel will be restored as near as possible to its original condition and location. Restoration of the original channel will include proper inline diversions, baffles and bank stabilization. As a part of and concurrent with the blocking of the french drains and removing the RCPs, grading and, as necessary, excavation will occur to restore natural elevations and stream channels. Natural elevations will be deemed to have occurred when natural hydric soils are exposed. Once the french drains or RCPs are blocked or removed and proper elevations and grade are re-established these areas will be planted with indigenous species as described in Section 3.2.

3.2 Planting

Within each of the three above described impact areas, re-establishment of a natural vegetative community will be aided by the planting of indigenous wetland species. Species to be planted will be based upon species composition surveys taken at reference plots within undisturbed onsite wetlands that are at similar elevations and grades. Each of the random plots will be 30 foot in diameter. Within in each plot all tree species will be identified and tallied to determine presence and dominance. From the tallied list, climax species of this ecosystem will be selected to be planted. Early successional plants such as sweetgum and red maple will not be planted, as volunteers of these species will naturally emerge.

Bareroot seedling species identified from the reference plots will be hand dibble planted at the rate of +/-200 trees per acre on 15 foot spacing. Seedlings will be obtained from a certified nursery source located within the same growing zone as the project site. Species distribution within each planting area will be based upon hydrologic tolerance and site conditions identified prior to planting. To reduce shock and promote greater survival rates, planting will occur during the dormant season.

4.0 Monitoring and Success Criteria

The landowner or its designee will monitor and document the survival and growth of planted and volunteer species within all of the areas proposed to be planted annually for five (5) years.

Monitoring will occur at the end of the planting, six months following and annually after the first growing season following planting of the areas.

Vegetative monitoring will be conducted by establishing at least one permanent sampling plot within each of the planted areas. At the time of planting, each of the plots will be established by

installing a ten-foot section of PVC pipe as a center mark for each plot. Each planted tree will be marked with a five-foot section of PVC and species recorded. Baseline surveys will be completed after completion of the restoration activities and will document the specific number of planted trees within each plot. The plots will be sampled annually at the end of the growing season (1 August - 15 October) each monitoring year. Stem survival will be documented for planted and naturally regenerating trees in 60 foot diameter plots, volunteer trees and shrubs in 20 foot diameter circular plots, and herbaceous species in 6 foot diameter circular plots. If during the monitoring period, it becomes difficult to accurately count stems of shrubs and herbaceous species, percent coverage estimates will be used. Species composition will be recorded for all plots. Successive annual survey data will be compared with the baseline data to determine success criteria. Photographs will be taken at established points in the restoration area over the five-year monitoring period to document the vegetation growth changes that occur in the restoration area. Annual monitoring reports (a total of 7) will be prepared by the landowner or its designee and submitted to the Corps of Engineers (COE) and the S. C. Department of Health and Environmental Control (DHEC). Annual reports will include results of monitoring, general site descriptions and conditions, photographs of the site and any additional information that is deemed necessary to document success.

The vegetative restoration effort will be considered successful and complete if, at the end of the five-year monitoring period, 70% of the planted trees survive in the areas to be planted and the seedlings show a consistent increase in height, lateral growth and root collar diameter throughout the five year monitoring year period.

In the alternative, if less than 70% of the planted species survive but desired volunteer species are established to adequately compensate and the desired target community has developed, then the restoration project may, after review by the appropriate regulatory agency personnel,

be considered complete. Target community is defined as a community with similar composition in species and distribution to the communities used in establishing the reference plots.

5.0 Contingency

If, at the end of the five-year monitoring period, success criteria in any of the mitigation areas have not been satisfied, the landowner or its designee will consult with the appropriate regulatory agencies to determine specifically what remedial action should be taken. If significant problems with the mitigation efforts are identified prior to the end of the initial five-year monitoring period, regulatory agency personnel will be consulted regarding the advisability of taking corrective action at that time. Remedial action may include replanting and/or re-grading and continued monitoring.

6.0 TIME FRAME FOR COMPLETING RESTORATION ACTIVITIES

Proposed restoration activities can begin in those areas not identified and/or defined as permanent impacts area for developmental reasons immediately upon plan approval. Deed restrictive covenants will be recorded on all restored areas. Planting of restoration sites will be accomplished during the first fall or winter dormant season following site work. It is estimated that it will take at least six (6) months to complete the restoration work.

7.0 MITIGATION

In order to provide some compensatory mitigation for the temporal loss of wetlands and their functions and values, the owner/developer intends to provide upland buffers adjacent to all existing undisturbed wetlands as well as those wetland areas to be restored. The establishment of upland buffers adjacent to wetland areas help maintain the biologic and chemical system by separating, protecting, and maintaining certain functions of an aquatic system. Buffer types (single-family residential, multi-family residential, commercial, industrial, landfill, or others) vary in width but it is the intent of the landowner/developer to provide buffers in accordance with the

COE's Standard Operating Procedures (RD-SOP-02-01) issued September 19, 2002. The land owner/developer intends to mitigate for the proposed permanent impacts to wetlands on-site and, if necessary, at an off-site location.

8.0 SUMMARY

Crossing Development, LLC regrets that impacts to waters of the United States occurred without proper authorization. However, Crossing Development, LLC believes that implementation of this restoration plan will restore the affected aquatic resource back to a fully functioning resource. The restoration of the affected waters of the United States, including wetlands, coupled with the development planned for the site will act to provide Richland County and the surrounding area with an environmentally sustainable upscale, mixed use development interwoven in the restored aquatic habitat providing both economic gains to the county and the property owner and aquatic resource protection and preservation that is beneficial to all involved. An After-the-Fact permit will be sought for those areas proposed for permanent impact to wetlands. Mitigation for the proposed permanent impacts authorized by issuance of an After-the-Fact permit will be provided through on-site restoration/creation opportunities or by off-site opportunities.

Figure # 2 Wetland Survey (Large Map)

Figure # 3 Restoration Plan (Large Map)